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The future of sustainable investing in Trump's second term
By Rob Burgess
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The reelection of Donald Trump to the presidency and Republican majorities in Congress will certainly have wide-ranging effects on the future of sustainable investing.

While the newly emboldened GOP may have grand designs for enacting rules and legislation to hamper these efforts, the gains of the past few years may be more difficult to undo than first appears.

That was the topic of a recent US Sustainable Investment Forum (SIF) webinar, which explored the possible outcomes for the field in the aftermath of Election Day.

Recent rule-making will be difficult to roll back
Bryan McGannon, managing director of US SIF, said there has been significant progress in sustainable investing in the past four years at the federal agency level.

In November 2022, The U.S. Department of Labor (DOL) announced a final rule that allowed plan fiduciaries to consider climate change and other environmental, social and governance (ESG) factors when they select retirement investments and exercise shareholder rights, such as proxy voting.The DOL concluded that two rules issued in 2020 during the first Trump administration unnecessarily restrained plan fiduciaries' ability to weigh ESG factors when choosing investments, even when those factors would benefit plan participants financially.

"Since that time, the entire field has moved forward," he said. "There's been a great deal of understanding of sustainable finance that didn't exist in the first [Trump] term."

McGannon said sustainable investing advocates also received another boost in November 2021, when the U.S. Securities and Exchange Commission (SEC) issued Staff Legal Bulletin No. 14L. This made it easier for shareholders of public companies to submit proposals, especially around ESG.

"The shareholder proposal process is moving forward," he said. "Anti-ESG folks are using the process as well. It's fascinating. They're both getting a lot of traction, but they understand that this is an important process for investors to communicate with boards and management."

In March, the SEC adopted rules to standardize companies' climate

disclosures.This is complicated by last week's announcement that SEC Chair Gary Gensler announced plans to step down as Trump retakes office in January 2025.

McGannon said that the SEC rule is currently being litigated in court. If the rule is upheld as valid, the SEC would have to then vote on whether to continue the challenge and then vote on whether to pass a new proposed rule to undo the original one.

"You still need a majority," he said. "That will take some time. So, they will not be able to move any contrary actions in the near term."

Republicans in Congress and legislative change

Legislatively, the past few years have been a mixed bag for sustainable investing. Even though this year the U.S. House of Representatives passed several bills aimed at curtailing shareholder rights and minimizing corporate disclosure, the Inflation Reduction Act of 2022 was the most sweeping piece of legislation aimed to address the climate crisis ever, said Maria Lettini, CEO of US SIF and the US SIF Foundation.

Though Republicans won a clean sweep on Election Day of the presidency, U.S. House and U.S. Senate, the latter two were by extremely thin margins, said McGannon.

"That portends that there is not a clear pathway to undoing the progress that's been made with sustainable finance over the last couple of years," he said. "That's also going to be a significant hurdle for bills that will be against sustainable finance."

Rachel Curley, director of policy for US SIF, said the filibuster will be a "key factor" in the U.S. Senate, which has a 60-vote threshold to invoke cloture and force a vote. One such piece of legislation that will certainly be reintroduced is H.R. 5339, the "Protecting Americans' Investments from Woke Policies Act,"which mimics the 2020 DOL rule that was overturned under President Joe Biden.

"[H.R. 5339] is affecting private retirement plans that are governed under the Employee Retirement Income Security Act (ERISA), making it much harder for investors to have clarity around whether or not they can use sustainability factors in their investment decisions," she said. "That rule that stands now says that investors are free to integrate sustainability factors as they find material and important to their investing decisions."

Another bill that will likely be reintroduced in the U.S. House will be H.R. 4790, the "Prioritizing Economic Growth Over Woke Policies Act."

"This bill would require that whenever the SEC is creating rulemaking around disclosure, the issuer or the public company is only required to disclose

information to the extent that the issuer finds that information material," said Curley. "This package also allows issuers to exclude any shareholder proposal from its proxy material if the proposal is focused on the sustainability topic."

State rules harder for Trump and allies to challenge

In addition to the gains at the federal level, there has been progress for advocates of sustainable investing in the states, as well, said McGannon. These will be more difficult for Trump and his allies to combat.

For example, in October 2023, California Gov. Gavin Newsom signed Assembly Bill 1305 and Senate Bills 253 and 261, which require companies operating in the state to provide climate change-related disclosures.

"That is going to be very hard for the federal government to unwind," he said. "They may try, but federalism is a strong current in our Constitution."